



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

November 6, 1961

Honorable R. L. Lattimore
Criminal District Attorney
Edinberg, Texas

Opinion No. WW-1187

Re: Whether trucks operating out of a warehouse accepting orders which are delivered to the fish dealer's wholesale house and making deliveries to purchasers from the wholesale house are required to each have a fish dealer's license.

Dear Mr. Lattimore:

You have requested an opinion from this office on the following matter:

"A wholesaler operates his wholesale house in a certain city in this county, where he makes wholesale sales of aquatic products, and which is covered by a wholesale Fish Dealer's License. The wholesaler also owns and operates several delivery trucks, from which no sales of fish are made. The drivers of the trucks, operating from the trucks, take wholesale orders for aquatic products and turn the orders in to the wholesale house. The orders are never filled direct from the trucks at the time the orders are taken. All orders go to the wholesale house for filling. The delivery trucks and their drivers perform only two functions, first, that of making deliveries from orders turned in to the wholesale house, and second, that of taking orders."

You have asked this office if the wholesaler must have a Fish Dealer's License on each of the delivery trucks, and if so, what kind of license must he have. The following provisions of Article 934a, Vernon's Penal Code of the State of Texas applies to the problem presented:

"Section 1. The following words, terms and phrases used in this Act are hereby defined as follows:

(b) A 'Wholesale Fish Dealer' is any person engaged in the business of buying for the purpose of selling, canning, preserving or processing, or buying for the purpose of handling for shipments or sale, fish or oysters or shrimp or other commercial edible aquatic products, to Retail Fish Dealers, and/or to Hotels, Restaurants or Cafes and to the Consumer.

(c) A 'Retail Fish Dealer' is any person engaged in the business of buying for the purpose of selling either fresh or frozen edible aquatic products to the consumer.

"Section 3. The licenses and the fees to be paid for the same are hereby provided for in this Act and are as follows:

2. Wholesale Fish Dealers' License, fee for each place of business, Two Hundred Dollars (\$200).

2-a. Wholesale Truck Dealers' License, fee for each truck, One Hundred Dollars (\$100).

11. Place of business, as used in this Act, shall include the place where orders for aquatic products are received, or where aquatic products are sold, and if sold from a vehicle, the vehicle on which, or from which such aquatic products are sold, shall constitute a place of business."

It is the opinion of this office that the taking of orders which are taken to the wholesale house and the deliveries of the aquatic products from the wholesale house to a purchaser are not sufficient functions to create a sale in themselves. Therefore, the wholesale house is the only "place of business" as defined in Article 934a Sections 3-11 and only one wholesale license may be required. Since there are no actual sales made from the trucks, they are not required to have a separate license.


S U M M A R Y

Trucks making deliveries from and accepting

orders for a fish dealer's wholesale
house are not required to be individually
licensed.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
J. T. Walker
Assistant Attorney General

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APPROVED:

OPINION COMMITTEE
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Joseph Trimble
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REVIEWED FOR THE ATTORNEY GENERAL
BY: Houghton Brownlee, Jr.